

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ALL AMERICA CABLES & RADIO INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 8293

Decision No. CU - 3974

Counsel for claimant:

Covington & Burling
by Stanley L. Temko, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$254,235.00, was presented by ALL AMERICA CABLES & RADIO INC., based upon the asserted loss of its assets in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of the State of New York and, at all times pertinent hereto, it was wholly owned by American Cable and Radio Corporation, a Delaware corporation which was owned in its entirety by International Telephone & Telegraph Corporation. An officer of International Telephone & Telegraph Corporation has certified that 7.319% of its outstanding capital stock was owned by aliens and that at all relevant times more than 50% of claimant's stock has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is made herein for the loss of claimant's assets in Cuba having an asserted value of \$254,235.00. The record shows that claimant operated submarine telephone and telegraph cables between New York and Guantanamo Bay; Miami and Havana; and Guantanamo Bay and the Canal Zone, Haiti, the Dominican Republic and Santiago de Cuba. The properties for which claim is made consisted of its cables from Miami to Havana, and Guantanamo to Santiago plus the terminal properties in Havana and Santiago, and the current assets.

It appears from the record that continuous actions by the Cuban Government reduced the control of claimant over the operations and personnel in its Cuban office so that on September 26, 1963, claimant's Board of Directors sent telegrams to its Cuban representatives and the Cuban Government denying any further responsibility for future operations in Cuba since they considered the operations seized.

The Commission, therefore, finds that claimant's assets in Cuba were taken by the Government of Cuba, as a result of the actions of the Director General of Telecommunications, on September 26, 1963, and that claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Miami - Havana Cable, depreciated cost	\$152,734.00
Guantanamo - Santiago Cable, depreciated cost	14,966.00
Plant, depreciated cost	70,880.00
Special Deposits	7.00
Prepaid accounts & deferred charges	93.00
Cash	7,304.00
Accounts receivable	8,237.00
Materials and supplies	14.00
Total Assets	<u>\$254,235.00</u>

We note that the amounts declared for the last five items above were erroneously computed by the claimant at the rate of 1 Cuban peso to 4 cents U.S. stated to have been the effective rate of exchange on September 26, 1963. The Commission has consistently held that the Cuban peso and United States dollar had the same value. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].) These same items computed on the basis applied in this program where the peso is held to be on a par with the dollar result in the following values:

Special deposits	\$ 186.99
Prepaid accounts & deferred charges	2,323.72
Cash	182,589.20
Accounts receivable	205,935.74
Materials and supplies	357.00
	<u>\$391,392.65</u>

On the basis of the entire record, the Commission concludes that the total value of claimant's assets in Cuba were:

Miami - Havana Cable	\$152,734.00
Guantanamo - Santiago Cable	14,966.00
Plant	70,880.00
Special deposits	186.99
Prepaid accounts & deferred charges	2,323.72
Cash	182,589.20
Accounts receivable	205,935.74
Materials and supplies	357.00
Total Assets	<u>\$629,972.77</u>

It is noted that claimant is an American corporation and the claim is for the nationalization of its assets in Cuba. The claimant is therefore entitled to recover for the seizure of its assets less the value of setoffs such as taxes due to the Cuban Government or valid liens against the Cuban assets.

The record shows that claimant was indebted to the Cuban Government for taxes in the amount of \$401.95. The Commission therefore finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$629,570.82.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered in this claim.

CERTIFICATION OF LOSS

The Commission certifies that ALL AMERICA CABLES & RADIO INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Hundred Twenty-Nine Thousand Five Hundred Seventy Dollars and Eighty-Two Cents (\$629,570.82) with interest at 6% per annum from September 26, 1963 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)